BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

PEGGY LOESSIN	)	
Claimant	)	
VS.	)	
	)	Docket No. 217,486
PARSONIAN HOTEL	)	
Respondent	)	
AND	)	
	)	
KANSAS RESTAURANT AND HOSPITALITY	)	
ASSOCIATION SELF INSURANCE FUND	)	
Insurance Carrier	)	

ORDER

Respondent requested review of the December 16, 1996, preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish.

ISSUES

Respondent contends the Administrative Law Judge exceeded his jurisdiction in granting claimant's request for an authorized treating physician because the evidence does not establish that claimant made timely written claim. In its brief, respondent described the issues for Appeals Board review as follows:

> "(1) Whether Claimant made timely written claim of her alleged back injury as required by K.S.A. 44-520a.
>
> "(2) Whether the 200 day statutory time limit for making timely written claim pursuant to K.S.A. 44-520a commences as a matter of law when compensation is suspended under K.S.A. 44-518 due to Claimant's failure to submit to a medical examination requested by Respondent.
>
> "(3) Whether the administrative law judge has jurisdiction to order medical treatment at a preliminary hearing without any medical evidence showing that Claimant is in need of additional medical treatment when all compensation

was previously suspended by Respondent under K.S.A. 44-518, and the 200 day time limit for making timely written claim had expired pursuant to K.S.A. 44-520a."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record and considered the briefs of the parties, the Appeals Board finds that the preliminary hearing Order should be affirmed.

Claimant alleged she injured her low back at work on September 23, 1995. She initially sought chiropractic treatment from Dr. David C. Bumgardner in Coffeyville, Kansas. Respondent paid for Dr. Bumgardner's services for a period of time but the insurance carrier eventually notified claimant that it would no longer authorize chiropractic treatment. By letter dated January 9, 1996, claimant was advised that medical treatment would be authorized with Pedro A. Murati, M.D., and that an appointment had been made for claimant to be examined by Dr. Murati on January 25, 1996. Claimant subsequently rescheduled her appointment with Dr. Murati to February 12, 1996. However, she failed to keep that appointment.

The last payment made by respondent for medical treatment was on March 27, 1996. Respondent contends that its payment of Dr. Bumgardner's bill on that date constituted the suspension of compensation payments pursuant to K.S.A. 44-520a and consequently claimant had 200 days from that date or until October 12, 1996, to file written claim. Claimant's form E-1 Application for Hearing was filed with the Division of Workers Compensation on October 30, 1996. Respondent argues this was the first written claim made by claimant and that her claim is time barred.

The Administrative Law Judge found "that the employer has never denied the Claimant medical treatment, only the services of a chiropractor." Consequently, "the Respondent has never denied compensation pursuant to K.S.A. 44-520a and therefore the 200 day limit has not yet began [sic] to run. The Claimant has made timely written claim." This ruling by the Administrative Law Judge should be affirmed.

Claimant concedes that respondent withdrew its authorization for her to obtain chiropractic treatment from Dr. Bumgardner. At the preliminary hearing she testified as follows:

JUDGE FROBISH: Let me just ask a question here. Since you started treatment, have you ever -- have they ever denied paying for the treatment?

THE WITNESS: The employer?

JUDGE FROBISH: Uh-huh.

> THE WITNESS: After I had started treatment and went for probably a month to six weeks, workman's comp told me that they would not authorize any more treatment. (Preliminary Hearing transcript at 10-11).

Nevertheless, the Administrative Law Judge found that respondent did not terminate medical compensation for purposes of K.S.A. 44-520a because respondent never deauthorized Dr. Murati. The preliminary hearing transcript shows the following colloquy between the Administrative Law Judge and counsel for respondent:

> JUDGE FROBISH: Okay, so you're telling me then that you would stipulate that they have never denied her any treatment other than chiropractic care?
>
> MR. BIDEAU: That's correct. (Preliminary Hearing transcript at 11-12).

Respondent argues that it was not required to notify claimant to the effect that Dr. Murati was no longer authorized because, under K.S.A. 44-518 claimant's failure to submit to a medical examination by Dr. Murati constituted an automatic suspension of benefits as a matter of law. The Appeals Board disagrees. Respondent could have notified claimant that Dr. Murati was no longer authorized or it could have sought an order from the Administrative Law Judge suspending compensation benefits under K.S.A. 44-518. However, respondent did neither. Respondent's failure to pursue either course meant that claimant's time for serving written claim did not commence to run before the date claimant filed her application for hearing with the Director. Therefore, claimant made timely written claim.

Respondent also raised an issue concerning whether the Administrative Law Judge has jurisdiction to order medical treatment at a preliminary hearing absent medical evidence showing claimant is in need of additional medical treatment. This is not an issue concerning which the Appeals Board has the jurisdiction to review on an appeal from a preliminary hearing order. Consequently, the finding by the Administrative Law Judge that claimant is in need of medical treatment cannot be reviewed at this point in the proceedings.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order by Administrative Law Judge Jon L. Frobish dated December 16, 1996, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1997.

BOARD MEMBER

c: Jack Shelton, Wichita, KS

David J. Bideau, Chanute, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director